IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 178 of 1991
In
SPECIAL CIVIL APPLICATION No. 7823 of 1989

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
DATTU RAGHU VANZARI - Respondent(s)

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Appearance :
MR DIPEN DESAI, AGP for Appellant(s) : 1 - 3.
MR ND SUTHAR for MR AR MAJMUDAR for Respondent(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 21/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

The appellant-State Government has preferred the present Appeal under Clause 15 of the Letters Patent

against the judgment and order dated 19th March, 1991 passed by the learned Single Judge in the above Special Civil Application No.7823/1989.

The respondent (hereinafter referred to as, **"the delinquent"**) was, at the relevant time, serving as a Police Sub-Inspector under the Commissioner of Police, Baroda city. On 22nd October, 1986 while on duty he was absent from his posting and was found in inebriated condition. A criminal prosecution was lodged against the delinquent for offences punishable under Sections 66(1)(B), 85(1) and 85(3) of the Bombay Prohibition Act. The delinquent was prosecuted in Summary Case No.4832/1986. By judgment and order dated 27th August, 1987 passed by the learned Judicial Magistrate, First Class, Vadodara the delinquent was acquitted of the aforesaid charges. Since his acquittal in criminal case, a disciplinary proceeding came to be initiated against the delinquent by a charge-sheet issued on 29th March, 1988. After following the due procedure the delinquent was held to be guilty. On 29th April, 1989 a notice was issued upon the delinquent to show-cause why he should not be dismissed from service and why the period spent

under suspension be not treated as such. Feeling aggrieved, the delinquent preferred Special Civil Application No.4852/1989. The said petition came to be disposed of on 11th July, 1989 (Coram: B.S.Kapadia, J.). The Court was pleased to direct that, **"...Accordingly the respondents are directed not to implement the order of dismissal or removal of the petitioner, if at all passed, in the departmental inquiry held against him, for a period of two weeks from the date of receipt of the said order, by the petitioner."** As recorded hereinabove, the delinquent came to be dismissed from service by order dated 6th October, 1989 made by the disciplinary authority. Feeling aggrieved, the delinquent preferred Special Civil Application No.7237/1989 before this Court. The said petition came to be disposed of on 17th October, 1989 (Coram: P.M.Chauhan, J.). The Court was pleased to direct that, **"...In view of the special circumstances of the case, the petitioner should be protected for five days more. The dismissal order is stayed and should not be operated or implemented upto October 25, 1989. Meanwhile, petitioner may submit the appeal memo and application for stay to the appellate authority."** It appears that pursuant to

the above order, the delinquent preferred appeal before the appellate authority and also applied for stay of the order of punishment pending appeal. As the said application was not decided forthwith, the delinquent approached this Court once again in Special Civil Application No.7696/1989 with a prayer for direction to the appellate authority to decide the application for stay taken out by the delinquent. The said petition came to be disposed of on 25th October, 1989 as under (Coram: R.A.Mehta, J.):-

> **"...Mr.A.R.Dave states that the stay application will be decided by 6-11-89. Interim relief granted earlier to continue till 10-11-89. Hence, SCA is withdrawn at this stage."**

The above referred application for stay came to be rejected by the appellate authority on 4th November, 1989. Feeling aggrieved, the delinquent preferred the above Special Civil Application No.7823/1989. Pending the said petition the appeal preferred by the delinquent came to be dismissed on 5th February, 1990. Feeling aggrieved, the delinquent preferred Revision Application before the State Government. The said

Revision Application came to be partly allowed on 6th April, 1990. The State Government confirmed the finding of guilt recorded against the delinquent. However, reduced the punishment from 'dismissal from service' to that of 'compulsory retirement'. The said orders were challenged by the delinquent in the above Special Civil Application No.7823/1989. The learned Single Judge was of the opinion that the delinquent having been acquitted by the Criminal Court, the disciplinary authority had no authority to initiate a disciplinary proceeding. Initiation of such disciplinary proceeding would amount to sitting in appeal over the decision of the Court. Accordingly, the learned Single Judge has, by the impugned judgment and order, allowed the writ petition and has set-aside the order of punishment as well as the action of initiating disciplinary proceeding against the delinquent. Therefore, the present Appeal.

Mr.Desai has submitted that the learned Single Judge has erred in holding that in the event of acquittal of a delinquent servant, no disciplinary proceeding can be initiated against him. He has

submitted that by now it is well-settled that even after the acquittal recorded by a Criminal Court the disciplinary authority has power to initiate disciplinary action in the same subject matter and to impose punishment. He has further submitted that a police officer not less than a Sub-Inspector, if found drunk while on duty, the misconduct is grave enough to warrant dismissal from service. In the submission of Mr.Desai, the acquittal of the delinquent in the criminal prosecution was wholly based on technical grounds and such acquittal shall not debar the disciplinary authority from initiating disciplinary proceeding against the delinquent. He has submitted that the disciplinary authority was, therefore, justified in initiating disciplinary action against the delinquent. He has read over the order of the revisional authority and has submitted that there was enough evidence to hold the delinquent guilty. The imputation of charge levelled against the delinquent having been proved, he was rightly punished by the authority below. In support of his submissions, he has relied upon the judgments in the matters of **Dalbir Singh v/s. Director General, CRPF,**

New Delhi [JT 1987(4) SC 152] and of **Arjunsinh Malaram v/s. State Govt. of Gujarat and another** [1992(2) GLR 1622]. He has also relied upon the judgment in the matter of **Commissioner of Police, New Delhi v/s. Narender Singh** [(2006)4 SCC 265].

Mr.Suthar has contested the Appeal. He has submitted that in the present case there was a composite charge of remaining absent from duty and of consumption of liquor. Before the Criminal Court the prosecution failed to establish that the delinquent was on duty. In view of the finding recorded by the Criminal Court it was not open to the disciplinary authority to hold the proceeding afresh and record finding to the contrary. In support of his submissions, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Capt. M.Paul Anthony v/s. Bharat Gold Mines Ltd. and another** [AIR 1999 SC 1416]. He has further submitted that pursuant to the judgment of the learned Single Judge, pending this Appeal the delinquent had been reinstated in service. Since his reinstatement in service he has discharged the duty satisfactorily. On reaching the

age of superannuation he has retired from service in the year 2005. He has also been paid provisional pension. In view of these subsequent events the Appeal deserves to be dismissed. He has submitted that even otherwise the order of punishment made against the delinquent was bad and illegal in as much as the finding of guilt recorded against the delinquent was based on 'no evidence'. Besides, the nature of guilt proved against the delinquent did not warrant an extreme penalty of dismissal from service/compulsory retirement.

The Hon'ble Supreme Court has, in the matter of Dalbir Singh (supra), held that, **“We wish to emphasize that the charge of a member of the Central Reserve Police Force being found in a state of intoxication while on duty is serious enough to merit dismissal from service and this order shall not be treated as a precedent.”**. The said judgment has been followed by this Court in the matter of Arjunsinh Malaram (supra). The said judgment has been confirmed by the Division Bench on 16th July, 1992 in Letters Patent Appeal No.236 of 1992.

The question whether after acquittal of a delinquent by a Criminal Court in a criminal prosecution the disciplinary authority has power to initiate disciplinary proceeding in the same subject matter is no more a *res integra*. The Hon'ble Supreme Court has, in the matter of **State of Rajasthan v/s. B.K.Meena and others** [AIR 1997 SC 13], observed that, **"...The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different.....The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different."** This view of the Hon'ble Supreme Court has been followed consistently till the date. The Hon'ble Supreme Court has, as late as in the matter of Commissioner of Police, New Delhi (supra), upheld the action of the disciplinary authority in initiating the disciplinary proceeding after acquittal by the criminal court. It has been observed that, **"...It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a**

criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose."

In the present case, the learned Judicial Magistrate, First Class recorded acquittal of the delinquent on the grounds, inter alia, that the Investigating Officer did not come forward to give his evidence. The chemical report was not received in evidence as the sample of the blood did not bear the seal of the doctor but bore the seal of the hospital. Moreover, the seal was not clearly legible. The doctor's evidence was discarded on the ground that she did not add anticoagulant to the blood sample herself. It has also been observed that the prosecution failed to establish that at the relevant time the delinquent was on duty. Thus, it is evident that the acquittal was recorded on technical grounds. We are, therefore, of the opinion that the disciplinary authority was justified in initiating disciplinary action against the delinquent even after his acquittal by the Criminal Court.

It should also be noted that before the disciplinary authority there were several witnesses examined by the prosecution who established that at the relevant time the delinquent was on duty and that he was not found at the place of his duty. It should be noted that the said witnesses were not examined in the criminal prosecution. It cannot be gain-said that the prosecution had established the guilt of the delinquent before the disciplinary authority. The report of the chemical analyser which was not accepted in evidence by the criminal court was admissible in evidence in a disciplinary proceeding. The said report discloses that the blood sample of the delinquent contained 0.2231 grams of ethyl alcohol which, undoubtedly, was well beyond the acceptable limit. In our view, the imputation of charge was established before the disciplinary authority. The disciplinary authority had, therefore, rightly held the delinquent guilty. Considering the nature of guilt proved against the delinquent the order of punishment is just and proper.

It should be noted here that the purpose of disciplinary proceeding and that of the criminal prosecution are totally different and distinct. The provisions of the Evidence Act do not apply to the disciplinary proceeding. The evidence which may not be admissible in evidence in a criminal prosecution can be relied upon in disciplinary proceeding. Besides, in a disciplinary proceeding, unlike criminal trial, strict standard of proof is not required. The purpose of the disciplinary proceeding is also different and distinct from that of criminal prosecution.

The matter does not require further deliberation. In the present case, it has been proved that the delinquent, a Police Sub-Inspector was, on the relevant day, on Bandobast duty; he was not found at his posting but was found at some other place in a state of intoxication. As held by the Hon'ble Supreme Court the misconduct was serious enough to merit dismissal from service. The acquittal of the delinquent in criminal prosecution was based on technical grounds. Besides, the evidence which was

available in disciplinary proceeding was not available to the criminal court. The learned Single Judge was, therefore, not right in holding that the disciplinary authority had no power to initiate disciplinary proceeding against the delinquent. In above view of the matter, the action of the disciplinary authority in holding disciplinary proceeding against the delinquent and the imposition of punishment upon the delinquent require to be upheld. We accordingly allow the Appeal. The impugned judgment and order of the learned Single Judge dated 19th March, 1991 is quashed and set-aside. The Special Civil Application No.7822/1989 is dismissed. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.) **(Harsha Devani, J.)**

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